

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2279 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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V J JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR Gautam Joshi for YN OZA for Petitioner
Mr K.M. Mehta, AGP for the Respondents

CORAM : MR.JUSTICE B.C.PATEL
Date of decision: 18/10/96

ORAL JUDGEMENT

The petitioner at the relevant point of time discharging his duties as Sub-Inspector has challenged the order of suspension vide Annexure-A dated 12.4.1984

being No.A/251/1984 issued by the Deputy Inspector General of Police, Gandhinagar Division, Gandhinagar, through District Superintendent of Police, Anand.

2 The facts briefly stated as they appear from the order of suspension are as under.

3 Complainant - Ali Mohammad Vazi Korpuya lodged his complaint for the offences punishable under section 167, 165A of the IPC and sections 5(1) and 5(2) of the Prevention of Corruption Act before ACB, Palanpur, vide CR No.1 of 1984. The petitioner, Sub-Inspector of Police, P.D.Rao and Ratansinh Ajitsinh (Grade-I Head Constables) who were investigating the crime in connection with theft of articles belonging to the complainant were expected to take action against the offenders in accordance with law but police personnel referred to hereinabove demanded a bribe and ultimately the showed their willingness to do the work in accordance with law on payment of Rs.200. These allegations were made in the complaint filed by the complainant before the ACB, Palanpur. The amount of bribe was accepted by Ratansing Ajitsing on 15.2.1984 at the time of trap arranged by the ACB. Vide Annexure-B it is submitted that the petitioner was transferred on 27.3.1984 from Banaskantha District to Kheda (South) and thereafter within a short period the order of suspension vide Annexure-A is passed which, according to the petitioner, is not in accordance with law. It is further submitted that when a government servant is prosecuted or is intended to be prosecuted then, in such case the government servant can either be suspended or be transferred to another station. It is submitted by the petitioner that both the powers, that is, of transfer as well as of suspension should not be exercised and in case if it is required to be exercised.

3 For this purpose the petitioner at the time of admission of this petition had relied on the order passed in Special Civil Application No.86 of 1985 a copy of which is at Annexure-C wherein the Division Bench while admitting the matters took the view that pending inquiry into allegations if a person is transferred to a distant station which puts him out of the area where he is said to have been responsible for the misconduct, there is no need for suspension.

4 It is required to be noted that in the instant case the order of suspension was passed on 12.4.1984. However, order at Annexure-A is typed in such a way by which one can read the year "1984" as 1985 also. It was

the duty of the person who produced the Annexure to see that the date and year is made legible. The order could not be passed on 12.4.1985 because the petition was affirmed on 25.3.1985 and on that date it was filed and therefore it is clear that the order is dated 12.4.1984. If that be so, the petitioner remained under suspension for about a year and therefore in a case where there is an order of suspension ordinarily, the relief should not be granted in such a way as if the order which is made effective since long is made ineffective. What the Government Pleader was doing at the relevant time? The Court issued Rule and it was ordered to be heard along with Special Civil Application No.86 of 1985. The Court at the time of issuance of Rule also granted interim relief in terms of para 12(C) till further orders. The surprising aspect is that till date the respondents have not taken care to file reply to the petition. Is the government or the respondents are unaware about the proceeding which is pending in this Court? In the instant case the learned advocate has placed reliance on an interim order passed in Special Civil Application No.86 of 1985. That application was pending before the Court at the relevant time. However, it appears that the said application has been decided on 16.9.1985 (J.S. Solanki v. Chief Conservator of Forest and Anr. reported in 1986(1) GLR 41). Was the learned Government Pleader in charge of the matter was not aware about the orders passed in Special Civil Application No.2279 of 1985? The learned advocate appearing in both the matters is same and was he also unaware of the order obtained by him in S.C.A. No.2279 of 1985 to the effect that this matter is required to be heard along with SCA No.86 of 1985? It was the duty of the office to make a note in SCA No.86 of 1985 to the effect that this writ petition is also required to be heard along with SCA No.86 of 1985. Why there is failure on the part of the office to notify can be explained by the registry only. It is therefore a fit case wherein the Joint Registrar should be directed to make a report in this behalf and submit the same before this Court.

5 The learned advocate when obtained the interim order in this matter knew that this matter should be heard along with Special Civil Application No. 86 of 1985 and he was aware that the said petition is already pending before the Division Bench as he himself annexed the order passed by the Division Bench in the said application at Annexure-C and the question is whether he has supplied the other set and if the other set was not supplied why the office has not raised any objection? From the papers it appears that after the order was

passed by the Court on 26.3.1985 the matter has never been placed before the Court except on the last occasion on 1.8.1996.

The Division Bench in the case of J.S. Solanki (supra) has held as under:

"In the opinion of this Court the said power to do both is wide not because the Government should exercise it in all cases indiscriminately."

Thus it is open for the Government to transfer and suspend the government servant. However, in para 27 the Court has pointed out that the order of suspension-cum-transfer should be used very sparingly in very rare cases where transfer or suspension is not alone sufficient to achieve the objective of containing the delinquent's sphere of influence. The facts of the case before the Division Bench were that the petitioner who was a range officer stationed at Dharampur, District Valsad, was suspended by order dated 7.8.1984 on the allegation of preparing false vouchers made for payment of wages to labourers and for encashing a cheque of Rs.20,000/- after having left the charge of his post. During the suspension period his headquarters came to be changed to Rajkot. It was contended that the order of transfer-cum-suspension is mala fide and contrary to the guidelines laid down by the Government. The Court in para 27 considering the various decisions held, "We do not see any merit in both the petitions. We would like to point out that although the question of exercise of administrative powers of suspension/transfer is within the discretion of the authority charged with the duty to exercise the same, since the exercise of such powers has certain civil consequences, they should be exercised with restraint and not as a matter of course." The Court further pointed out "We feel it would be advisable to record reasons on the file bringing out clearly why in addition to suspension, change of headquarters is necessary. Once the reasons are stated, the Courts would be able to better appreciate the executive's action and would be loathe to interfere with it." The Court further pointed out, "Normally, Courts should be slow in interfering with such administrative orders which are of a discretionary nature and if the reasons which weighed with the authority are known, it would assist the Court in dealing with the challenge directed against it." After observing the aforesaid, the Court dismissed the petitions and at the same time directed the Government to review the cases of the delinquents in the light of the observations within 15 days from the date of the judgment

and also directed to communicate the decision to the delinquent and at the same time directed the Government to maintain the status quo.

6 In paragraphs 12(C), the petitioner has prayed as an interim relief as under:

"12(c). Pending admission, hearing and final disposal of this petition, be pleased to stay the operation of the order of suspension Annex.A and/or be pleased to suspend the execution, implementation or enforcement of the order annexure-A and/or be pleased to direct the respondents not to disturb the petitioner from discharging his duties as PSI, Anand District and/or be pleased to direct the respondents to maintain status quo as on one day prior to the passing of order at Annexure-A;"

7 Under the circumstances, as the prayer is granted, it is necessary that the petitioner has been ordered to continue by maintaining status quo as on one day prior to passing of order at Annexure-A. But, the order is to the effect that the respondents are directed not to disturb the petitioner from discharging his duties as PSI, Anand District, and this Court has directed the respondent to permit the petitioner to work only at Anand and in the cadre of PSI only. If the respondents have transferred the petitioner outside Anand or have promoted him, the respondents are required to report to this Court within one week from today. If there is any promotion or transfer, it must be noted by the respondents that in view of the orders passed by this Court the petitioner is permitted to remain at Anand as PSI only if respondents have acted so as to disturb the status quo either by transferring or promoting it would amount to breach of the orders.

8 In the case of J.S. Solanki (supra) the Division Bench has directed in para 28 while dismissing the petition to review the case of the delinquent within a period of 15 days from that day and to communicate its decision to the delinquent and in the meanwhile ordered to maintain the status quo. In the present case also that State shall review the case within a period of 30 days and shall communicate its decision to the delinquent and in the meantime State shall maintain status quo in terms of Para 12(C). It is the duty of the State to see that order passed by this Court at the stage of admission

as well as today is strictly implemented. The petition stands disposed of. However, the respondent shall report to this Court in the light of the observations made hereinabove within a period of two weeks from today without fail.
